

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
In Re: PHARMACEUTICAL )

INDUSTRY AVERAGE WHOLESALE )

PRICE LITIGATION )

-----X  
THIS DOCUMENT RELATES TO )

ALL ACTIONS )

-----X

August 18, 2004

9:36 a.m.

30(b)(6) Deposition of Johnson &  
Johnson Health Care Services by its  
representative, CHRISTOPHER MAFFIE, held  
at the offices of Patterson, Belknap, Webb  
& Tyler LLP, 1133 Avenue of the Americas,  
New York, New York, pursuant to notice,  
before Cary N. Bigelow, RPR, a Notary  
Public of the State of New York.

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1 ----- I N D E X -----

2 WITNESS EXAMINATION BY PAGE

3 CHRISTOPHER MAFFIE MR. MACORETTA 11

4

5 ----- EXHIBITS -----

6 HCS FOR ID.

7 Exhibit Maffie 001, deposition notice 32

8

9 Exhibit Maffie 002, three-page document 60

10 headed "Purchases Made by Plaintiffs

11 or Drugs Manufactured/Distributed by

12 the Johnson &amp; Johnson Group,"

13

14 Exhibit Maffie 003, documents bearing 47

15 production Nos. MDL-OMP0006741

16 through MDL-OMP0006746

17

18 Exhibit Maffie 004, document bearing 101

production No. MDL-OMP0000932,

19

20 Exhibit Maffie 005, document bearing 123

21 production Nos. MDL-HCS0043522

22 through MD-HCS00034523

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4	Exhibit Maffie 006, document bearing	140
5	production No. MDL-HCS00032821	
6		
7	Exhibit Maffie 007, documents bearing	162
8	production Nos. MDL-HCS00001900	
9	through MDL-HCS00001902	
10		
11	Exhibit Maffie 008, documents bearing	166
12	production Nos. MDL-HCS00043591	
13	through MDL-HCS00043592	
14		
15	Exhibit Maffie 009, documents bearing	169
16	production Nos. MDL-HCS00042797	
17	through MDL-HCS00042799	
18		
19	Exhibit Maffie 010, documents bearing	172
20	production Nos. MDL-HCS00021027	
21	through MDL-HCS00021028	
22		

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1 ----- EXHIBITS -----

2 HCS FOR ID.

3

4 Exhibit Maffie 011, document bearing 199

5 production No. MDL-HCS00063558

6

7 Exhibit Maffie 012, documents bearing 203

8 production Nos. MDL-HCS00036263

9 through MDL-HCS00036264

10

11 Exhibit Maffie 013, documents bearing 224

12 production Nos. MDL-HCS00036203

13 through MDL-HCS00036210

14

15 Exhibit Maffie 014, documents bearing 230

16 production Nos. MDL-HCS00063559

17 through MDL-HCS00063562

18

19 Exhibit Maffie 015, document bearing 233

20 production No. MDL-HCS00018350

21

22

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1 ----- EXHIBITS -----

2 HCS FOR ID.

3

4 Exhibit Maffie 016, document bearing 242

5 production No. MDL-HCS00020627

6

7 Exhibit Maffie 017, documents bearing 245

8 production Nos. MDL-HCS00021797

9 through MDL-HCS00021798

10

11 Exhibit Maffie 018, two-page document 248

12 headed "Rebate Summary"

13

14 Exhibit Maffie 019, documents bearing 250

15 production Nos. MDL-HCS000442859

16 through MDL-HCS000442863

17

18 Exhibit Maffie 020, documents bearing 252

19 production Nos. MDL-HCS00019739

20 through MDL-HCS00019746

21 Exhibit Maffie 021, two-page document 260

22 headed "Executive Summary"

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1	----- EXHIBITS -----	
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4	Exhibit Maffie 022, four-page executive	263
5	payment summary	
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7	Exhibit Maffie 023, five-page document	264
8	headed "Duragesic CAM Sales	
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1 ----- EXHIBITS -----

2 HCS FOR ID.

3

4 Exhibit Maffie 028, five-page document 269

5 headed "Innovatix-4 Q98 OMP Sales by

6 Member"

7

8 Exhibit Maffie 029, four-page document 271

9 headed "OBI-3Q98"

10

11 Exhibit Maffie 030, 10-page document 273

12 headed "1991\_April"

13

14 Exhibit Maffie 031, 11-page document 275

15 headed "1992\_CBHIST"

16

17 Exhibit Maffie 032, documents bearing 277

18 production Nos. MDL-OBI00037018

19 through MDL-OBI00037083

20

21 Exhibit Maffie 033, documents bearing 280

22 production Nos. MDL-OBI00036969

through MDL-OBI00036983



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1 ----- EXHIBITS -----

2 HCS FOR ID.

3

4 Exhibit Maffie 034, documents bearing 285

5 production Nos. MDL-OBI00036179

6 through MDL-OBI00036202

7

8 Exhibit Maffie 035, documents bearing 294

9 production Nos. MDL-OMP0005583

10 through MDL-OMP0005599

11

12 Exhibit Maffie 036, document bearing 297

13 production No. MDL-HCS00050812

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15 Exhibit Maffie 037, documents bearing 298

16 production Nos. MDL-HCS00038605

17 through MDL-HCS00038607

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19 Exhibit Maffie 038, documents bearing 301

20 production Nos. MDL-HCS00004102

21 through MDL-HCS00004105

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1 ----- EXHIBITS -----

2 HCS FOR ID.

3

4 Exhibit Maffie 039, seven-page document 308

5 headed "PROCRIT (Epoetin alfa) vs

6 darbepoetin alfa: A Side-by-Side

7 Specialty Distribution Comparison"

8

9 Exhibit Maffie 040, documents bearing 311

10 production Nos. MDL-HCS00003359

11 through MDL-HCS00003361

12

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1 IT IS HEREBY STIPULATED AND AGREED,  
2 by and between the attorneys for the  
3 respective parties herein, that filing and  
4 sealing be and the same are hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED  
6 that all objections, except as to the form  
7 of the question, shall be reserved to the  
8 time of the trial.

9 IT IS FURTHER STIPULATED AND AGREED  
10 that the within deposition may be sworn to  
11 and signed before any officer authorized to  
12 administer an oath, with the same force and  
13 effect as if signed and sworn to before the  
14 Court.

15 C H R I S T O P H E R M A F F I E, called as  
16 a witness, having been duly sworn by a  
17 Notary Public, was examined and testified  
18 as follows:

19 EXAMINATION BY

20 MR. MACORETTA:

21 Q. Mr. Maffie, good morning. We met a  
22 minute ago. I am John Macoretta here for the

1 Q. It doesn't matter how far you are  
2 below the national market share, you are going  
3 to get the same transition discount?

4 A. It is spelled out in the contract as  
5 the transition rebate is whatever it is, X  
6 percent, and it stays that way for a specific  
7 period of time and then it goes away after that.

8 Q. By the way, when we say X percent for  
9 a rebate, we are talking X percent of total  
10 purchases by that customer?

11 A. We typically refer to the percent off  
12 of our list price, distributor list price.

13 Q. What do you do, you take the total  
14 units of sales and multiply it by your list  
15 price to get to that or --

16 A. Exactly. We use the distributor list  
17 price at the beginning of the quarter and we --  
18 and whatever the discount is, if it is \$100, 10  
19 percent discount, the rebate is \$10 on every  
20 unit.

21 Q. So you just take your discount and  
22 multiply by however many units the PBM tells you

1 here or reports it to you and then you do  
2 whatever analysis you do?

3 A. Yes.

4 Q. Performance tiers, could you explain  
5 to me what performance tiers are?

6 A. Those are -- I used the term tiers in  
7 my earlier answer. Typically what we will have  
8 in contracts is, whether they are national  
9 market share based or not, there will be -- an  
10 example will be if you were at national market  
11 share, you get a certain rebate. If you are  
12 five points higher than national market share,  
13 you may get a higher rebate.

14 Q. So that would be next tier?

15 A. Next tier, so as market share grows,  
16 there are tiers built in at certain market share  
17 thresholds that allow for higher rebates.

18 Q. I take it where those tiers split is  
19 something that is negotiated with the customer  
20 as part of the contract price?

21 A. Yes.

22 Q. Is there some sort of standardized

1 tier formula at Johnson & Johnson, HCS?

2 A. No.

3 Q. The lowest price is the next category  
4 there.

5 Is there some discount related to  
6 lowest price which you may offer?

7 A. No. That -- I don't know what's  
8 implied by that in looking at this document.

9 Q. Admin fee, slash, other fees, we  
10 talked a little bit -- well, do you know what  
11 that means, admin fees, slash, other fees?

12 A. I can tell you how I have used the  
13 term when I use admin fees, slash, other fees.

14 In the event that a fee does not  
15 qualify under the safe harbor as an admin fee,  
16 it would be included on that line, we call them  
17 admin fees or other fees.

18 Q. Explain what you mean by the safe  
19 harbor.

20 A. There is a GPO safe harbor regulation,  
21 and I don't know the right statute number but --

22 Q. You don't have to, that's not your

1 job.

2 A. But that outlines the requirements for  
3 or spells out the criteria for an admin fee that  
4 would be acceptable, and we have guidance from  
5 our law department on what we should follow  
6 there. So if something falls outside of those  
7 guidelines, we will consider it a fee, but not  
8 an administrative fee, so --

9 Q. Let me -- sorry, finish your answer.

10 A. That's okay, that was it.

11 Q. Let me back up one level.

12 Why is it important as to whether or  
13 not something qualifies as an admin fee or not?

14 A. It has to do with how we report  
15 pricing to the government.

16 Q. Meaning that admin fees are not  
17 reported as adjustments to price?

18 A. Admin fees are not considered  
19 discounts.

20 Q. Or rebates, so that has a Medicaid  
21 best price implication, right?

22 A. Yes.

1 Q. Does it have implications for other  
2 kinds of government reporting?

3 A. It does. We not only disclose best  
4 price, but we make disclosures for federal  
5 supply schedule contracts, so there are a few  
6 other -- any disclosure we make to the  
7 government, those administration fees are  
8 important to spell it out.

9 Q. Just so we are clear, if something is  
10 considered an admin fee, it's not going to be  
11 involved in the best price calculation, right?

12 A. It is excluded.

13 Q. What if something is an other fee?

14 A. It's included as a discount.

15 Q. Okay. Can you give me an example of  
16 what other fees would be that wouldn't be within  
17 the safe harbor you just described?

18 A. Well, in the example here in this  
19 document, there is something that says, you  
20 know, 4.2 percent range for PBMs only. 4.2  
21 percent is above the safe harbor, it guides us  
22 to 3 percent, so we would have to consider that



1 4.2 percent a discount, not an admin fee,  
2 because it is above 3 percent.

3 Q. Whatever the admin fees consist of, if  
4 they are more than 3 percent, they are not in  
5 the safe harbor?

6 A. Right.

7 Q. But whether or not an admin fee is  
8 within the safe harbor, it also depends on what  
9 the fee is for, right?

10 A. Yes.

11 Q. And I am asking you, other than the  
12 fact that some fee is above 3 percent, what  
13 would be an other fee?

14 A. The other fee -- other discounts --  
15 actually, there is a second line here, so there  
16 is really nothing. Basically, the fee didn't  
17 meet the requirements of an admin fee.

18 Q. What are the requirements of an admin  
19 fee? Let's do it that way.

20 I am asking you for your  
21 understanding. I understand there is a  
22 regulation and --

1           A.       My understanding -- the regulation  
2 guides you that the fee has to be paid to  
3 someone acting as a purchasing agent, is my  
4 understanding. If they are not acting as an  
5 agent on behalf of the purchaser, then they are  
6 not eligible for an administration fee.

7                   The fee has to be limited to -- it  
8 should not be above 3 percent is another thing,  
9 and -- so that is my understanding from the  
10 documents.

11                   So those two parameters dictate  
12 whether the fee is eligible or can be considered  
13 an admin fee or not, and also there is another  
14 requirement, as it relates to PBMs, if a PBM has  
15 a mail order business and in the mail order  
16 business they take possession of the product,  
17 that since you take possession of the product,  
18 the fee might -- it might have met -- it might  
19 have met the first criteria of being less than 3  
20 percent, but they were not acting as an agent in  
21 that capacity, because they were now the  
22 purchaser of the product, so we would need to

1 separate out their mail order business from  
2 their retail business and consider any fees paid  
3 on the mail order business a discount.

4 That's another example of where, what  
5 the other fee might be.

6 Q. Is there a requirement that whoever is  
7 getting the fee actually do something to earn  
8 it?

9 MR. SCHAU: Object to form.

10 A. Can you repeat that or restate that  
11 for me?

12 Q. Sure.

13 For something to be an admin fee, it  
14 has to go through an agent, has to be less than  
15 3 percent. Does that fee have to represent a  
16 specific service or function provided by whoever  
17 is getting it?

18 A. Typically we do look at what's being  
19 provided as a barometer to determine how much an  
20 administration fee we will pay, so data, the  
21 information is one thing that we look at when we  
22 look at how much of the fee we would be willing

1 to pay.

2 Q. That's something that you look at, but  
3 is there some requirement within a safe harbor  
4 or something else that says we have to -- you  
5 have to do something to get the fee?

6 A. No.

7 Q. Are there internal policies at HCS  
8 dictating what can and can't be an  
9 administrative fee or relating to administrative  
10 fees generally?

11 MR. SCHAU: You mean outside of the  
12 government guidance?

13 Q. Yes.

14 A. Can you rephrase the question?

15 Q. Do you have internal HCS policies  
16 regarding admin fees?

17 A. Yes, we do.

18 Q. What do those policies relate to  
19 specifically? I am sure they say somewhere to  
20 follow the government guidance, right?

21 A. Yes.

22 Q. Other than that, are there other

1 policies?

2 A. The document that I am thinking of is  
3 the administrative fee position statement that  
4 basically outlines the requirements of the safe  
5 harbor regulation and spells out for us what is  
6 considered an acceptable basis for considering a  
7 fee, an administration fee, or also in providing  
8 guidance on what to do if it doesn't meet the  
9 criteria, so that's about a page and a half  
10 document.

11 Q. What's that called?

12 A. That's called the managed markets or  
13 managed care council position statement on  
14 administration fees.

15 Q. So that is something created by the  
16 managed care council?

17 A. Yes.

18 Q. Before you sign a contract with an  
19 administrative fee in it, does somebody have to  
20 review that, that element of the contract, to  
21 decide whether the administration fees are  
22 appropriate?

1 A. Yes.

2 Q. Who is that?

3 A. We work with -- we have attorneys at  
4 Health Care Systems that are contract attorneys,  
5 so the contract attorneys review all of the  
6 contracts that we develop and if needed, they  
7 obtain additional -- they take care of providing  
8 the legal due diligence, so we kind of hand that  
9 to them and let them complete their analysis.

10 Q. Is there something called health care  
11 compliance as well?

12 A. Yes.

13 Q. What is that? Is that a group or a  
14 unit within J&J?

15 A. Are you asking me about -- are you  
16 asking me about is there a health care  
17 compliance team?

18 Q. Yes.

19 A. Because health care compliance is so  
20 big that it is very broad and --

21 Q. Is there some team, a group of people  
22 that is called health care compliance?

1           A.     At Health Care Systems there is a --  
2     what is the title? The title is escaping me.

3                     There is a compliance team at Health  
4     Care Systems, so my answer is yes.

5           Q.     Are they involved in generally  
6     reviewing administrative fees?

7           A.     The compliance team generally does  
8     not. The legal, the contract attorney will  
9     review that information.

10          Q.     I am trying to understand, as to  
11     administrative fees, what type of services does  
12     HCS pay administrative fees for?

13          A.     It's going to vary -- can you be more  
14     specific? Are you talking about PBMs or --

15          Q.     Who else do you pay admin fees to  
16     other than PBMs?

17          A.     We would pay admin fees to GPOs,  
18     whether they service hospitals, long-term care  
19     facilities, and to PBMs, those are the primary  
20     categories.

21          Q.     Let's limit that to PBMs, then.

22                     What type of services do you get for

1 those admin fees?

2 A. Typically, they are providing, you  
3 know, as an intermediary, as an agent on behalf  
4 of all their members, they are managing the  
5 formulary for those members, so the access to  
6 that membership into that overall formulary, and  
7 the work they do to consolidate that and allow  
8 us to sort of plug into their membership is one  
9 thing that we get by contracting with them, so  
10 the administration fee is in support of all the  
11 work they do to build and support that  
12 infrastructure, right, and provide us access to  
13 their members.

14 Q. To build and manage the formulary?

15 A. All of the formulary work they do,  
16 exactly.

17 Other things they can do is provide  
18 data and information about their membership.

19 Q. Anything else that you are paying  
20 administrative fees for?

21 A. Those are primarily -- the primary  
22 points of interest is access to membership.



1 Q. Is it the case that sometimes they  
2 also provide you data on prescriptions and  
3 members as well?

4 A. Yes. And it varies, but yeah, they do  
5 provide reporting and information. Some do,  
6 some don't.

7 Q. Is that something you pay extra for  
8 usually?

9 A. Well, it's one of the factors in  
10 considering what we would be willing to pay as  
11 far as an administration fee, how much we'd pay.

12 Q. Internally at HCS, is there some  
13 method for evaluating what that data is worth?

14 A. We don't have a structured protocol.

15 Q. Are there some guidelines you use for  
16 that or --

17 A. We don't have written guidelines.

18 Q. Are there general guidelines?

19 I presume they say, well, we want 2  
20 percent access to formulary rebate but we will  
21 take -- if you give us a 3 percent rebate, we  
22 will provide you data or something like that?

1 Is that the discussion?

2 MR. SCHAU: Object to form.

3 Q. You can answer that, if you understand  
4 it.

5 A. Why don't you restate that, then?

6 Q. Sure.

7 At some point do you consider paying  
8 an additional administrative fee if you are  
9 going to receive some data?

10 A. I would say -- my response is we would  
11 evaluate what we're getting from the PBMs or  
12 what they are sort of -- what services they are  
13 providing. If it's just general formulary  
14 management, really nothing else in the data,  
15 obviously, we are going to be looking to keep  
16 that -- we are not going to be willing to pay as  
17 much as if we were getting data and information,  
18 so it's sort of a -- it's -- that's the concept  
19 that we assess and there's other factors that  
20 come into play about, you know, there are  
21 minimums that they are willing to accept as part  
22 of the negotiation, but we try to keep a fair

1 (Record read.)

2 A. Not that I recall. What I recall is  
3 requiring in our, where we do address that issue  
4 in our new contract, new contract templates,  
5 putting in some requirements around reporting to  
6 their -- to the client plans how much in total  
7 payments they have received from Johnson &  
8 Johnson, both in administrative fees and  
9 rebates.

10 So we ask them, require in our  
11 contracts to do that disclosure.

12 Q. So they are required to disclose how  
13 much money they are getting from Johnson &  
14 Johnson, they are not required to give any of  
15 that money to their customers, at least under  
16 your agreement with them?

17 A. You know, I would have to double-check  
18 the contract, if it is a requirement of the  
19 agreement or not to pass on all of the rebates  
20 or whether we don't address the issue. I would  
21 have to double-check it.

22 Q. We have some contracts we are going to

1 look at in a little while.

2 You said new contract templates?

3 A. Mm-hmm.

4 Q. JJHCS has recently created new  
5 contracting templates?

6 A. We recently created a new contracting  
7 template.

8 Q. What is recently?

9 A. This year, 2004.

10 Q. Has that been enacted in any  
11 contracts?

12 A. Yes.

13 Q. Presumably the new contract that we  
14 just looked at, Advance.

15 A. You are referring to which Advance  
16 contract?

17 Q. What contracts have the new template  
18 been used in?

19 A. The contracts we have been entering  
20 into over the last couple of months.

21 Q. Who would that be, do you recall?

22 A. Offhand --

1 THE WITNESS: I have a question.

2 Is that relevant to the time period we  
3 are discussing, 2000 and before?

4 MR. SCHAU: He is entitled to that.

5 A. Any new contracts we have written  
6 recently. I know we have had a proposal with  
7 Advance Caremark and the terms of the proposed  
8 agreement, even though it is not signed, are  
9 based on the new agreements, based on the new  
10 terms, but basically everything since probably  
11 the April-May time frame we have been using the  
12 new template.

13 We can get you that information, but I  
14 don't recall off the top of my head.

15 Q. This requirement that the PBM disclose  
16 all monies it receives from Johnson & Johnson,  
17 is that a fair way to characterize that in the  
18 new template?

19 A. Repeat that again?

20 Q. In the new template there is a  
21 requirement that the PBM disclose all monies it  
22 receives from Johnson & Johnson to its members;

1 is that correct?

2 A. Yes, we require them to disclose all  
3 the money they receive.

4 Q. This disclosure requirement, was that  
5 something which was added in the new template?

6 A. Yes.

7 Q. Why did you feel the need to add that?

8 A. To add clarity around expectations and  
9 obligations on what we expect the PBM to be  
10 doing.

11 Q. The new contract template, was that  
12 something which was discussed at the managed  
13 care council?

14 A. Yes.

15 Q. So are there documents talking about  
16 these are the new provisions, this is why we  
17 should implement them, this is the good or bad  
18 of them, any discussion about that?

19 A. Yes.

20 Q. Other than the disclosure requirement  
21 we were just talking about, what else is new in  
22 the new contract templates?

1           A.       I am thinking how to break it down.

2                   Our contracts are broken down into  
3       sections. They include definitions, product and  
4       exhibits, I will call it general terms and  
5       conditions as well as payment terms and  
6       conditions, and we basically modernized it to  
7       reflect the current thinking from the law  
8       department of what a template should look like  
9       and got input from business folks as well to  
10      address certain things that may not have been  
11      addressed and to add clarity and consistency to  
12      what we were doing, so basically an improvement  
13      over the old template.

14                We added definitions, we added some  
15      terms clarifying payment and rebates, we added  
16      some of those disclosure requests that I  
17      mentioned earlier around the PBM to disclose all  
18      of the funds received from the manufacturer to  
19      their client plans and sharing that information,  
20      and some, I will call it general legal  
21      provisions of the contract.

22           Q.       Let me jump back to rebates payments

1 for a moment.

2 Under your contracts, does Johnson &  
3 Johnson have the right to conduct any type of  
4 audit of the PBM relating to how much the PBM is  
5 submitting for a rebate claim?

6 A. Yes.

7 Q. Have you ever done that?

8 A. Yes.

9 Q. Have you done it since you have been  
10 there at least once for each of the largest  
11 three PBMs?

12 A. We have.

13 Q. Speaking generally, I want to talk a  
14 little more generally now about how drugs -- how  
15 you decide what drugs are to be contracted and  
16 what the terms are.

17 This morning you told me the decision  
18 as to whether the drug is going to be contracted  
19 or not rests pretty much solely with the  
20 operating company, right?

21 A. Yes. The determination of whether or  
22 not the contract for a product with health plans



1 and PBMs is the operating company decision, and  
2 I distinguish that -- I say that sort of the way  
3 that that's the strategy.

4 The strategy is do I want or not want  
5 a contract for this brand within health plans  
6 and PBMs, which can be separate from an  
7 individual instance of a particular contracting  
8 opportunity, there may or may not be an option  
9 in the contract for.

10 Q. So even if the strategy isn't in the  
11 contract, some opportunity may come up or --

12 A. No, you are --

13 Q. Maybe I am not understanding the  
14 distinction.

15 A. I am just clarifying that there is a  
16 strategy component to what happens early or  
17 upstream where the operating companies determine  
18 whether or not they want a contract for this  
19 product within a particular customer segment.

20 Q. When we say contract, we are talking  
21 mostly, at least with PBMs, to the offering  
22 rebates; is that right?

1 A. Yes.

2 Q. Then is it the operating company that  
3 decides what type of rebates or how much of a  
4 rebate it wants to offer?

5 A. Yes.

6 Q. Is HCS involved in that process?

7 A. We are involved in that process.

8 Q. Are there any kind of general  
9 guidelines or policies as to the levels of  
10 rebates or the amounts of rebates that should be  
11 offered?

12 A. In some cases yes, in some cases no.  
13 That depends on the operating company. Some  
14 operating companies have them, some don't.

15 Q. So there is no HCS guideline or  
16 policy?

17 A. No.

18 Q. The broad question, how do you decide  
19 how much of a rebate to offer, the answer is  
20 that that is up to the operating company?

21 A. Yes.

22 Q. And how the operating company does it,

1 that varies from operating company to operating  
2 company?

3 A. Yes.

4 Q. Typically, how often is that rebate  
5 amount revisited, meaning is it once a year you  
6 decide we should change the amount of rebates  
7 offered, is it once every three years, does it  
8 vary from drug to drug or --

9 A. It varies based on the situation and  
10 from product to product.

11 Q. Is it fair to say that pretty much all  
12 of the rebates are based on some national market  
13 share calculation?

14 A. No.

15 Q. For PBMs.

16 A. For PBMs, no. It varies product by  
17 product.

18 Q. Are they all based on some market  
19 share calculation?

20 A. No. It varies.

21 Q. What else would they be based on?

22 A. Some of those -- as I believe we

1 discussed earlier, some of the contracts may  
2 have just a formulary rebate with no market  
3 share requirements built in, and that's a  
4 combination of maybe the product strategy to  
5 contract that way, or the dynamic at a  
6 particular account leads us down the path of  
7 that's the way we structure the offer. But in  
8 many cases there are market share and market  
9 share requirements and in most cases they are  
10 national market share based when there are  
11 market share requirements.

12 Q. Do you have any drugs you contract for  
13 that have generic competition?

14 A. Yes.

15 Q. Is that the exception rather than the  
16 rule or --

17 MR. MACORETTA: Let me strike that.

18 Q. Is there some policy regarding whether  
19 or not you are going to contract for drugs that  
20 have generic competitors or not?

21 A. No.

22 Q. Just like the decision as to what

1 drugs we are going to offer for contract, it is  
2 up to the operating company, I presume it is  
3 their decision as whether they are not going to  
4 contract for it anymore?

5 A. Yes.

6 Q. Generally, what percentage of total  
7 rebates on a drug are given to PBM customers as  
8 opposed to some other customers?

9 A. I don't know -- maybe you could  
10 restate the question or -- I am not sure what  
11 you are asking me.

12 Q. As a general matter, what percentage  
13 of rebates paid by Johnson & Johnson go to PBMs  
14 as opposed to something else? Is it 50 percent  
15 of the rebate dollars?

16 I understand you are not going to give  
17 me an exact percentage.

18 A. First of all, the way I will respond  
19 is this: It varies based on drug to drug, it  
20 varies based on where I have contracts.

21 Case in point, if there is -- if the  
22 world consisted of three PBMs and three health